take for the carriage of human beings, whose lives and limbs and health are of great importance as well to the public as to themselves, the ordinary principle in criminal cases, where persons are made liable for personal wrongs and injuries arising from slight neglect, would seem (he says) to furnish the true analogy and rule." See also STORY, BAILMENTS, § 601, and *Jackson* v. *Follett*, 3 Eng. C. L. 307. And in *Treadwell* v. *Whittier*, supra, the court held the proprietor of a passenger elevator liable for the use of the utmost care and vigilance, on the ground that the danger in such transportation is as great or greater than in the case of the ordinary railroad transportation. To anyone familiar with the modern scenic railway it is evident that the danger and helplessness of the passenger in case of accident are fully as great as in the case of the passenger elevator or ordinary railroad. In this connection may be noted the case of *Johnson* v. *Coey*, 237 Ill. 88, 86 N. E. 678, in which the action was against the owner of an automobile hired by the plaintiff, for negligent operation of the machine by defendant's servant. In the course of the opinion the court observed that the "driver of the automobile was bound to use at least reasonable and ordinary care." Inasmuch as the defendant was held liable it was unnecessary, for the purposes of that case, for the court to go further.

The rule of the principal case should not be confused with the holding in cases involving the degree of care in general required of owners of amusement parks. The rule, almost without exception, in those cases is that only ordinary care is required. *Hart* v. *Washington Park*, 157 Ill. 9, 41 N. E. 620, 29 L. R. A. 492, 48 Am. St. Rep. 298; *Dunn* v. *Agricultural Society*, 48 Oh. St. 93, 18 N. E. 496, 1 L. R. A. 754, 15 Am. St. Rep. 556; *Sebeck* v. *Verein*, 64 N. J. L. 624, 46 Atl. 631, 50 L. R. A. 199, 81 Am. St. Rep. 512. Cf. *Scott* v. *University of Michigan Athletic Ass'n.*, 152 Mich. 684. R. W. A.

WHO CAN COMPLAIN OF ULTRA VIRES ACQUISITION OF REAL ESTATE BY A CORPORATION?—In answer to the question just formulated, it may be said in general that, as a result of the application of the doctrines of estoppel and of the application of the legal maxim "in pari delicto conditio defendentis potior est," private individuals are not allowed to complain of ultra vires and illegal holdings of realty by corporations. The positive answer to the question is found in the ruling that such objection must come from the state, and in the ancillary ruling to the effect that silence on the part of the state signifies the assent of the only power entitled to interfere. The court of civil appeals of Texas has been confronted very recently with the question and, owing to the numerous decisions at hand and the well settled status of the law upon the subject, had little difficulty in arriving at a conclusion in accord with these decisions. *Knowles et al.* v. *Northern Texas Traction Company* (1909), — Tex. Civ. App. —, 121 S. W. 232.

In the above-cited case, the question was presented in an interesting manner. The Midland Company was the owner of a rather extensive tract of land, over which it had granted the defendant Traction Company a right of way. The Midland Company subsequently conveyed the tract of land to one Knowles. Knowles brought suit against the Traction Company to try the title

to and for the purpose of obtaining possession of the land thus appropriated by the Traction Company as its right of way. It did not definitely appear, but the court assumed, for a part of its discussion at least, that the defendant had no power to take and hold the right of way. The decision below was affirmed and the plaintiff was deemed not entitled to any relief whatever. The plaintiff's contentions, that the Traction Company was without power to take and hold a grant of the right of way, that the grant was void, and that plaintiff could attack the validity of the holding, were not sustained. This power, the court held, was one which could be questioned by the state alone, and the court refused to go into a discussion or investigation of the validity of the holding at the instigation of the plaintiff.

The principle that only the state can complain of an ultra vires holding of realty by a corporation, where the conveyance has been made and the transaction has been fully executed, has been so often laid down by eminent jurists that it has become a well known and firmly established principle in our law. *Pere Marquette Railroad Co.* v. *Graham,* 136 Mich. 444. Where the corporation is holding as a result of an executed contractual agreement with the complaining party, the courts will not interfere, and will generally leave both parties where it finds them. The articles of incorporation and statutes under which corporations are formed are matters of public record with which persons dealing with corporations are presumed to have acquainted themselves. No contractual relations existed between plaintiff and defendant in the above-mentioned case, but there also the complaining party was remediless. The state, it is believed, but seldom sees or takes hold of these "invisible, intangible beings" and brings them to justice, so it can readily be seen that, laying aside the scant possibility of interference from the state, corporations of *all* sorts and descriptions have practically an unlimited capacity to take and hold realty. In spite of this obvious injustice and inconsistency, it is believed that the ruling that the state alone can complain is the proper one and does justice in more cases than would be done by any that has yet been suggested. The law is theoretically correct, and the dangers will be removed when a closer scrutiny is given to corporate affairs by state officials.

It might be interesting to note in passing that the deed, in the absence of any statute to the contrary, vests the title indefeasibly in the corporation even though the taking be illegal. The state cannot confiscate the land so obtained, nor can a private person render the deed ineffective. The only punishment to which the corporation may be subjected is the forfeiture of its charter as the result of a direct proceeding for that purpose upon the part of the state. *Barnes* v. *Suddard,* 117 Ill. 237, 7 N. E. 477; *Lancaster* v. *Improvement Co.,* 140 N. Y. 576; *Nat. Bank* v. *Whitney,* 103 U. S. 99, 35 N. E. 964.

When the transaction has not been fully executed, a different rule often prevails. Especially true is this of actions wherein the corporation is seeking specific performance or is otherwise trying to perfect its title. In such cases it may be said, in general, that an interested individual may question the corporation's power to take the real estate in question. See *South & N. R. Co.* v. *Highland Ave., etc.,* 119 Ala. 105, 24 South 114. The courts are about evenly divided upon the question as to whether a corporation can maintain

ejectment for lands which it is ultra vires for it to hold. That it can, see *Shewalter* v. *Pioneer,* 55 Mo. 218. That it cannot, see *Carroll* v. *E. St. L.* 60 Ill. 568. Some courts hold that, where a devise of real estate exceeds the quantity of realty which a corporation is permitted to hold, the heir or residuary legatee may recover such excess. *In re McGraw's Estate,* 111 N. Y. 66, 2 L. R. A. 387, 19 N. E. 233; *Wood* v. *Hammond,* 16 R. I. 98, 17 Atl. 324; *House of Mercy* v. *Davidson,* 90 Tex. 529, 39 S. W. 924. See note in 9 L. R. A. (N. S.) 689. A number of courts hold otherwise. *Hanson* v. *Sisters of the Poor,* 79 Md. 434, 32 L. R. A. 293 and note; *Farrington* v. *Putnam,* 90 Me. 405, 37 Atl. 652; *Jones* v. *Habersham,* 107 U. S. 174, 27 L. Ed. 401. Furthermore, a stockholder has the right to the aid of a court of equity to prevent the corporation or its managing officers from misapplying its capital in making ultra vires acquisitions of realty. *Pollock* v. *Farmer's L. & T. Co.,* 157 U. S. 429. Even when the transaction is fully executed, the better ruling would seem to be that equity will relieve an injured stockholder, who acts promptly, even to the extent of setting aside the ultra vires transaction, if, in the meantime, no superior equity has intervened nor the rights of innocent third parties attached. *Harding* v. *Glucose Co.,* 182 Ill. 551, 55 N. E. 577. A person outside the corporation cannot object after the transaction has been executed, no matter how promptly he acts. A stockholder it seems is the only one who can ever object to an ultra vires acquisition and then only under the circumstances above-mentioned.

The rule that the state alone can complain would be entirely satisfactory if in every case the state officials could have actual knowledge of the ultra vires transaction. At the present time this is anything but true. President Taft in a recent speech delivered at Denver upon the new corporation income tax said: "Another feature of it is that incidentally it will give the federal government an opportunity to secure most valuable information in respect to the conduct of corporations, their actual financial condition, which they are required to show in general terms in a public return. In addition the law provides the means under proper limitations of investigating fully and in detail their course of business. * * * Up to this time we have no adequate statistics concerning our corporations. Even the stockholders, whatever their right may be to know the course of business of corporations, are generally in a state of complete ignorance, and any instrumentality by which the corporations shall be compelled to disclose the accuracy of a general statement of their conditions certainly makes for the public good." The present tendencies, as exhibited by the new law just referred to, are for a closer supervision and regulation of corporate affairs, and the effect will probably be to greatly diminish the number of ultra vires transactions in real estate. R. T. H.

THE HEINRICH BRUNNER MEMORIAL.—Heinrich Brunner, professor of law in the University of Berlin, will celebrate on June 21, 1910, his seventieth birthday. A committee of prominent German jurists has been formed to assure due recognition, on this anniversary, of Brunner's achievements as teacher and as writer. It is proposed to publish, as is customery on such occasions, a volume of essays prepared in his honor by his colleagues and